

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STORMANS, INCORPORATED, et al.,

Plaintiffs,

v.

MARY SELECKY, et al.,

Defendants.

Civil Action No. C07-5374 RBL

RESPONSE AND OBJECTIONS OF
NON-PARTY DONALD DOWNING
TO SUBPOENA

Pursuant to FRCP 45(c)(2)(B), non-party Donald Downing responds and objects to the Subpoena dated October 14, 2008 issued by plaintiffs as follows:

GENERAL OBJECTIONS

Donald Downing generally objects to the list of requested documents contained in the Attachment to Subpoena on the grounds that:

1. The subpoena requests the disclosure of an unretained expert's opinion or information that goes beyond the specific events in dispute and results from the expert's study which was not made at the request of a party.

2. The requests are overbroad and unduly burdensome.

RESPONSE AND OBJECTIONS OF DONALD
DOWNING TO SUBPOENA
(No. C07-5374)

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ATTORNEY GENERAL OF WASHINGTON
University of Washington Division
4333 Brooklyn Avenue NE, Box 359475
Seattle, WA 98195-9475
(206) 543-4150

1 Washington State Board of Pharmacy, its current or former board members,
 2 staff, employees, attorneys, and/or anyone acting on behalf of the Washington
 3 State Board of Pharmacy concerning Plan B, refusal to dispense or stock Plan B
 4 or any other drug, or the rule-making process or negotiations that resulted in
 5 WAC 246-869-010 and amendments to WAC 246-863-095.

6 2. Any and all documents from January, 2004, to the present related to
 7 communications or meetings, whether formal or informal, between you and the
 8 Washington State Human Rights Commission, its current and/or former
 9 commissioners, staff, employees, attorneys, and/or anyone acting on behalf of
 10 the Washington State Human Rights Commission concerning Plan B or any
 11 other drug, refusal to dispense or stock Plan B or any other drug, or the rule-
 12 making process or negotiations that resulted in WAC 246-869-010 and
 13 amendments to WAC 246-863-095.

14 3. Any and all documents from January, 2004, to the present related to
 15 communications or meetings, whether formal or informal, between you and the
 16 Washington State Governor's Office, its staff, employees, including Christina
 17 Hulet, and/or anyone acting on behalf of the Washington State Governor's
 18 Office concerning Plan B or any other drug, refusal to dispense or stock Plan B
 19 or any other drug, or the rule-making process or negotiations that resulted in
 20 WAC 246-896-010 and amendments to WAC 246-863-095.

21 Response:

22 Donald Downing objects to Requests 1, 2 and 3 on the grounds that they are
 23 duplicative of material available to plaintiffs through the parties and/or the Public Records
 24 Act, RCW 42.56, et seq. Since these documents are already available to plaintiffs, this

1 request is unduly burdensome. Also, the term “related to,” is vague and overbroad in that it
 2 encompasses that documents that are not relevant and thus production would be unduly
 3 burdensome. These requests do not comply with FRCP 45(a)(1)(C) that a subpoena identify
 4 the documents sought and FRCP 45(c)(1) that a party take reasonable steps to avoid
 5 imposing undue burden or expense on a person subject to a subpoena.

6 Donald Downing also objects on the grounds that these requests may require the
 7 disclosure of his (an unretained expert’s) opinion or information that do not describe the
 8 specific events in dispute and result from his study that was not made at the request of any
 9 party. In addition, the time frame of the requests is overly broad.

10
 11 Request No. 4:

12 Any and all documents from January, 2004 to the present to or from you concerning
 13 your involvement and/or decision to become involved in the rule-making process or
 14 negotiations that resulted in WAC 246-869-010 and amendments to WAC 246-863-
 15 095.

16 Response:

17 This request seeks documents that are not relevant or reasonably calculated to lead to
 18 admissible evidence in this proceeding. This request seeks “any and all documents . .
 19 .concerning your involvement and/or your decision to become involved in the rule making
 20 process . . .” This request could encompass any document that pertains to the issue of
 21 refusal and Plan B and is not limited to the rule making process. Thus, as written, it is
 22 overbroad and burdensome. This request also infringes on Donald Downing’s First
 23 Amendment rights of association and to petition the government. Donald Downing also
 24 objects on the grounds that these requests may require the disclosure of his (an unretained

expert's) opinion or information that do not describe the specific events in dispute and result from his study that was not made at the request of any party. Additionally, the timeframe of this request is overly broad.

Request No. 5:

Any and all presentations or speeches, whether formal or informal, made or given to the general public or to any group or organization concerning patient access to Plan B, refusal to dispense or stock Plan B, or the rule-making process or negotiations that resulted in WAC 246-869-010 and amendments to WAC 246-863-095.

Response:

Donald Downing objects to this request on the grounds that it calls for the production of documents that would be cumulative and duplicative of those already available from the parties in this proceeding. It is also not relevant to this proceeding and not calculated to lead to the discovery of admissible evidence. The request is overbroad in that there is no timeframe and unduly invasive of his right to privacy. Donald Downing also objects on the grounds that these requests may require the disclosure of his (an unretained expert's) opinion or information that do not describe the specific events in dispute and result from his study that was not made at the request of any party. Additionally, Donald Downing objects because this request infringes on his First Amendment rights of association and to petition the government. This request is not narrowly drawn to avoid undue burden or expense as required by FRCP 45.

Request No. 6:

Any and all surveys, research, studies, investigations, presentation, or any other

1 documents related the Emergency Contraceptive Collaborative Agreement Program
2 in Washington.

3
4 Response:

5 Donald Downing objects to this request on the grounds that it seeks documents that
6 are not relevant to this proceeding and are not reasonably calculated to lead to the discovery
7 of admissible evidence. Donald Downing also objects on the grounds that these requests
8 may require the disclosure of his (an unretained expert's) opinion or information that do not
9 describe the specific events in dispute and result from his study that was not made at the
10 request of any party. Additionally, this request is overbroad because there is no time-frame
11 or geographic scope.

12
13 Request No. 7:

14 Any and all documents, correspondence, or any other communications from
15 January, 2004, to the present to or from the Planned Parenthood Federation of
16 America, Planned Parenthood of Western Washington, Northwest Women's Law
17 Center, NARAL Pro-Choice America, The National Organization for Women, or the
18 American Civil Liberties Union and/or any of those organizations' affiliates or
19 entities (including their agents, employees, staff, board members, or anyone to your
20 knowledge acting on behalf of those organizations) regarding access to Plan B or
21 any other drug, refusal to dispense or stock Plan B or any other drug, or the rule-
22 making process or negotiations that resulted in WAC 246-869-010 and amendments
23 to WAC 246-863-095.

1 Response:

2 Donald Downing objects to this request because it seeks documents that are not
3 relevant and not reasonably calculated to lead to the discovery of evidence admissible in this
4 proceeding. Donald Downing also objects on the grounds that these requests may require
5 the disclosure of his (an unretained expert's) opinion or information that do not describe the
6 specific events in dispute and result from his study that was not made at the request of any
7 party. This request also infringes on his First Amendment Rights of association and to
8 petition the government. Donald Downing also objects on the basis that this request seeks
9 documents created by other entities who were not directly involved in the rulemaking
10 process. Additionally, the timeframe of this request is overbroad.

11
12 Request No. 8:

13 Any and all documents from January, 2004, to the present related to alternatives or
14 proposed alternatives to the current version of WAC 246-869-010 and WAC 246-
15 863-095.

16 Response:

17 Donald Downing objects this request on the grounds that it seeks documents that are
18 not relevant and not reasonably calculated to lead to the discovery of evidence admissible in
19 this proceeding. Donald Downing also objects on the grounds that these requests may
20 require the disclosure of his (an unretained expert's) opinion or information that do not
21 describe the specific events in dispute and result from his study that was not made at the
22 request of any party. It is also duplicative of documents available to Plaintiffs through the
23 parties and the Public Records Act. In addition, the timeframe of this request is overbroad.

Request No. 9:

Any and all documents or communications regarding the case of *Stormans, et al. v. Selecky, et al.*, Civil Action No. C07-5374, currently pending in the Federal District Court for the Western District of Washington and the Federal Circuit Court of Appeals for the Ninth Circuit.

Response:

Donald Downing objects on the grounds that this request is overbroad, unduly burdensome and vague. There is no timeframe specified.

DATED this 28th day of October, 2008.

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Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2008, I electronically filed the foregoing RESPONSE AND OBJECTIONS OF NON-PARTY DONALD DOWNING TO SUBPOENA with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kristen K. Waggoner
Ellis, Li & McKinstry
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Seattle, WA 98101-1052

Attorneys for Plaintiffs

In addition, a copy of the document was also sent to Ms. Waggoner via facsimile on October 28, 2008 and to the following via e-mail:

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DOWNING TO SUBPOENA
(No. C07-5374)

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